Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1927

No. 159

THE GOODYEAR TIRE & RUBBER COMPANY, INC.,
PETITIONER,

vs.

THE UNITED STATES.

PETITION FOR CERTIORARI TO THE COURT OF CLAIMS.

(32,383)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 816

THE GOODYEAR TIRE & RUBBER COMPANY, INC., PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 24, 1927.

[fol. a]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 816

THE GOODYEAR TIRE & RUBBER COMPANY, INC., Petitioner,

v.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, The Goodyear Tire & Rubber Company, Inc., respectfully represents:

The Decision Below

June 14, 1926, the Court of Claims sustained a demurrer and dismissed the petition of The Goodyear Tire & Rubber Company, Inc. A motion for new trial was filed by the petitioner July 16, 1926, and was overruled October 25, 1926. The decisions of the Court of Claims have not yet been reported.

Summary of the Matter Involved

The petitioner sues for unpaid rent under a lease to the United States for the use of the Veterans' Bureau at an annual rental of $44,152.58 involving property in Cincinnati, [fol. b] Ohio.

This lease was dated in 1921 and by its terms was to continue until June 30, 1926, provided there was sufficient appropriations from year to year. Prior to June 30, 1923, representatives of the Veterans' Bureau notified the petitioner that the United States would give up occupancy of the premises as of June 30, 1923.

Prior to June 30, 1923, an act had been passed providing a sufficient appropriation for such rent for the period from June 30, 1923, to June 30, 1924, 42 Stat. L. 1227. What followed is thus stated in the plaintiff's petition:

"When June 30, 1923, arrived the officials of the Veterans' Bureau desired to occupy the premises beyond that date, and possession was continued by the United States into the following fiscal year, the officials of the Veterans' Bureau then stating that there was no intention on the part of the United States to pay rent for any longer time than the actual period of occupancy, and the officials of the claimant company stating that it was their contention that the lease extended to June 30, 1926, and that even if the original lease was not binding beyond June 30, 1923, nevertheless if the United States remained longer than June 30, 1923, it would at least be liable for the stipulated rent for the year ending June 30, 1924, under the laws* of the State of Ohio by reason of holding over."

The United States continued in possession until December 20, 1923, and paid rent for the period to December 31, 1923, but has paid no rent for the period from January 1, 1924, to June 30, 1924, the remainder of the fiscal year. The petitioner was unable to rent the premises during that period.

[fol. c] In view of the decision in Leiter v. The United States, 271 U. S. 204, the petitioner abandoned its contention that the United States was bound for the full term to June 30, 1926. The petitioner continued to assert, however, and still contends that since there was a Federal appropriation before June 30, 1923, pursuant to which the lease might have been extended to June 30, 1924, and since by the common law of Ohio where the land was, such a holding over on June 30, 1923, would have created a tenancy to June 30, 1924, as between individuals, the United States became bound for the year by the act of holding over coupled with the authority to lease the property contained in the appropriation act.

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*NOTE.—This refers to common law. No Ohio statute is involved as to the effect of holding over.

In other words, the petitioner contends:

1. By the Appropriation Act of February 14, 1923, 42 Stat. L. 1227, appropriation had been made available for "rentals" for the Veterans' Bureau for the fiscal year ending June 30, 1924. There was therefore on June 30, 1923, authority to lease the property to June 30, 1924. This authority removed any impediment so far as R. S. Secs. 3732 and 3679* as amended were concerned, to the creation of a liability upon the United States ex contractu to pay rent if such liability would otherwise follow from acts of the proper officers of the United States.

2. Under the laws of Ohio, the affirmative act of holding over, even in spite of an express statement by the tenant [fol. d] that he did not intend to be bound, would create liability to pay rent just as effectively as the execution of a new lease, if the landlord treated such holding over as creating a tenancy for another year. The appropriate officer of the United States with authority to obligate the United States by reason of the Appropriation Act held over into the year for which there was an appropriation, and this act was treated by the plaintiff as creating a tenancy for another year. Under the laws of Ohio, these acts of the parties were as effective in creating a tenancy for another year as a duly executed lease would have been. There being no law of the United States to prevent, the United States was therefore bound by the one law applicable—the law of Ohio—to pay rent for another year.

The Court of Claims, however, ignored the Ohio common law, apparently believing that the United States as a tenant was not subject to the ordinary rules applicable to individuals, and held that the United States was bound only for the period of actual occupancy, for which the rent already had

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*NOTE.—Section 3732 of the Revised Statutes provides, with certain exceptions not here material, that: "No contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment. * * *" And Sec. 3679 of the Revised Statutes, as amended by the Act of February 27, 1906, c. 510, provides that: "No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law."

been paid. Judgment was therefore entered for the United States.

Reasons Relied on for the Allowance of the Writ

1. The Court of Claims decided a Federal question of substance not heretofore determined by this Court: to-wit, whether when the United States has leased real estate in a State it is bound by the local common law of landlord and tenant and thus may become bound for another year by holding over, in a case where there was statutory authority to bind the United States for such rent by reason of the fact that there was an appropriation available for the payment of the rent for the ensuing year.

[fol. e] 2. The Court of Claims decided an important question of local law in conflict with the Ohio decisions in Strong v. Schmidt, 8 Cir. Dec. 551; Rosenbaum v. Pendleton, 9 O. D. 642; Kerrish v. Brewing Company, 17 Ohio C. C. R. (N. S.) 449; which hold that the landlord may treat such a holding over as creating a tenancy for another year in spite of an express statement by the tenant that he does not intend to be bound.

3. It is believed that the Court of Claims has decided this important question erroneously on the mistaken theory that it is following the recent decision of this Court in Leiter v. The United States, 271 U. S. 204. In the Leiter case, as in the Goodyear case, there was a lease to the Veterans' Bureau for a period of years contingent upon future appropriation. In each case the United States occupied for several years and then gave notice that the term would end June 30. In each case prior to the June 30th in question there had been an appropriation for rent for the ensuing fiscal year. From this point, however, the cases differed. In the Leiter case after the appropriation there was no holding over into the ensuing fiscal year nor was there any other act to which liability to pay rent might attach. But in the Goodyear case after the appropriation there was a holding over into the ensuing year. In deciding the Leiter case this Court held that as there was after the appropriation no act which could cause liability there could be no recovery, saying:

"The leases were not continued under this appropriation for the next year, either by a specific agreement to that effect or *by the occupation of the premises.*" (Italics ours.)

This language clearly indicates that had there been a holding over as in the Goodyear case the United States would have been liable.

[fols. f & g] 4. In the mistaken belief that it was following the Leiter cases the Court of Claims has departed from the well settled law created by its own decisions in McCollum v. United States, 17 C. Cls. 92, Connecticut Mutual Life Insurance Company v. United States, 21 C. Cls. 195, and Smoot v. United States, 38 C. Cls. 418, holding that the United States might become bound as a tenant for another year by holding over; and its decisions in Spoffard v. United States, 32 C. Cls. 452, Clifford v. United States, 34 C. Cls. 223, and Blair v. United States, 53 C. Cls. 457, holding that the local State law is to be applied as against the United States as a tenant.

5. This question is important owing to the large amount of property in the States leased by the United States. To give only one example, the appropriation for rent, light and fuel for post offices alone for the year ending June 30, 1925, was $14,416,600, 43 Stat. L. 64, 86.

Wherefore the petitioner, believing that the aforesaid judgment of the United States Court of Claims is erroneous, respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the United States Court of Claims, as provided by law, to the end that the said case may be reviewed and determined, and upon final consideration thereof, the judgment of the United States Court of Claims may be reversed with such directions as to this Court may seem proper and in conformity with law.

Respectfully submitted.

Spencer Gordon, Dean G. Acheson, Attorneys for Petitioner.

[fol. 1] IN COURT OF CLAIMS OF THE UNITED STATES

No. F-70

THE GOODYEAR TIRE & RUBBER COMPANY, INC.,

v.

THE UNITED STATES

I. PETITION—Filed February 17, 1926

Validity of Lease to Veterans' Bureau for Five Years Contingent on Annual Appropriations. Liability of United States for One Year's Rent under Ohio Law Because of Holding Over.

The claimant respectfully represents:

1. The claimant is a corporation duly incorporated under the laws of the State of Delaware and sues on a lease to the United States for unpaid rent for the period from December 31, 1923, to June 30, 1926, or such part of the [fol. 2] same as the Court may find due under the following state of facts.

2. Under date of July 27, 1921, the Goodyear Tire & Rubber Company, a corporation organized and existing under the laws of the State of Ohio, submitted in writing a certain proposal to lease to the United States for the use of the Bureau of War Risk Insurance certain premises contained in a building located at 415 East 6th Street, Cincinnati, Ohio, to wit, the entire first, second and third floors, for a term beginning September 1, 1921, and ending June 30, 1926, at an annual rental of $33,412.83, and the entire fourth floor of said building for a term beginning April 1, 1922, and ending June 30, 1926, at an annual rental of $10,739.75. This proposal was subject to the condition that "in the event an appropriation is not made from which rent hereunder for any succeeding fiscal year may be paid, this agreement shall automatically terminate as of June 30th of the fiscal year for which an appropriation is last available." A copy of this proposal is filed herewith marked "Claimant's Exhibit 1."

3. Under date of August 23, 1921, C. R. Forbes, Director of the Veterans' Bureau, addressed a letter to the Goodyear Tire & Rubber Company, erroneously styled "The Goodyear Tire & Rubber Company, Inc.," stating that the proposal of July 27, 1921, was accepted, subject to certain conditions expressly set forth in said letter of August 23, 1921. On October 13, 1921, the Goodyear Tire & Rubber Company signed an indorsement at the foot of said letter as follows: "We hereby assent fully to all of the foregoing terms and conditions—The Goodyear Tire & Rubber Company, By G. M. Stadelman, Vice-President, Attest Charles [fol. 3] A. Stillman, Secretary," and the seal of the Goodyear Tire & Rubber Company was thereto affixed. This proposal in writing of August 23, 1921, as so accepted October 13, 1921, constituted a lease from the Goodyear Tire & Rubber Company to the United States for the use of the Veterans' Bureau. A copy of said lease is attached hereto marked "Claimant's Exhibit 2."

4. So far as material to this case the terms of said lease were as follows: The Goodyear Tire & Rubber Company was therein designated as the lessor and the Veterans' Bureau for and in behalf of the United States of America was designated as the lessee. The lessor did thereby "lease, demise and let" the premises described in paragraph 2 hereof at a rental of $33,412.83 per annum for the first second and third floors, the rent to be paid beginning with the date of occupancy and ending June 30, 1926, and at a rental of $10,739.75 per annum for the fourth floor, the rent to be paid for a term beginning April 1, 1922, and ending June 30, 1926. It was further provided:

"That it is mutually understood and agreed that in the event an appropriation is not made from which rent hereunder for any succeeding fiscal year may be paid, this agreement shall automatically terminate as of June 30th of the fiscal year for which an appropriation is last available, and in such event both parties hereto shall be relieved from obligation hereunder in like manner as if the term of occupancy had run its full period."

5. The contingency of an appropriation not being made as in the lease provided did not occur, in that appropria-

[fol. 4] tions were in fact made from which rent might have been paid for each of the fiscal years covering the period from October 13, 1921, to June 30, 1926, by the following statutes:

Annually for a period of four years ending June 30, 1924, by the Act of June 2, 1920, 41 Stat. L. 735.

For the fiscal year ending June 30, 1922, Act of March 4, 1921, 41 Stat. L. 1367, and Act of August 9, 1921, 42 Stat. L. 147.

For the fiscal year ending June 30, 1923, Act of June 12, 1922, 42 Stat. L. 635.

For the fiscal year ending June 30, 1924, Act of February 14, 1923, 42 Stat. L. 1227.

For the fiscal year ending June 30, 1925, Act of June 7, 1924, 43 Stat. L. 521.

For the fiscal year ending June 30, 1926, Act of March 3, 1925, 43 Stat. L. 1198.

6. The Veterans' Bureau on behalf of the United States took possession of the first, second and third floors of said demised premises October 1, 1921, and took possession of the fourth floor thereof June 1, 1922. The Veterans' Bureau on behalf of the United States occupied said premises continuously down to December 20, 1923, on which date the Veterans' Bureau vacated said premises.

7. January 9, 1922, the Goodyear Tire & Rubber Company, a corporation organized under the laws of the State of Ohio, subsequent to a reorganization thereof, assigned, transferred, and set over to the Goodyear Tire & Rubber Company, Inc., a corporation organized and existing under the laws of the State of Delaware, and the claimant in this case, the lease between the Goodyear Tire & Rubber Company and the United States on behalf of the Veterans' [fol. 5] Bureau, dated October 13, 1921, hereinbefore described, leasing the first, second, third and fourth floors of 415 East 6th Street, Cincinnati, Ohio. A copy of this assignment is attached marked "Claimant's Exhibit 3."

8. May 1, 1922, a letter was addressed by the Acting Director of the United States Veterans' Bureau to the claimant, the Goodyear Tire & Rubber Company, Inc., and an acknowledgment of the same was made in words and figures as follows:

Cincinnati, Ohio Dist. No. 7, 415 E. 6th Street

ARW/ml. L & C-1027-ARW.

May 1, 1922.

The Goodyear Tire and Rubber Company, Inc., East Market Street, Akron, Ohio.

GENTLEMEN: In view of the decision of the Attorney General relating to contracts based on annual appropriations, it is considered necessary to give notice that the United States does hereby renew a certain lease dated August 23, 1921, by and between the United States and the Goodyear Tire and Rubber Company, Incorporated, covering premises described as the entire first, second, third and fourth floors, containing a total area of approximately 46,476 square feet of floor space in the building located at No. 415 East Sixth Street, Cincinnati, Ohio, for the fiscal year beginning July 1, 1922, and ending June 30, 1923.

Respectfully, (Sgd.) L. B. Rogers. L. B. Rogers, Acting Director, U. S. Veterans' Bureau.

[fol. 6] Receipt of the above notice is acknowledged and assent is hereby given to the renewal of said lease.

The Goodyear Tire & Rubber Company, Inc., Lessor, by G. M. Stadelman, Vice-President.

Attest: Chas. A. Stillman, Secretary. (Seal of the Goodyear Tire & Rubber Company, Inc.)

August 15th, 1922.

9. The rent for the demised premises was duly paid by the United States to the Goodyear Tire & Rubber Company and to the claimant, the Goodyear Tire & Rubber Company, Inc., down to June 30, 1923. Prior to that date officials of the United States Veterans' Bureau informed the claimant company that the United States would give up occupancy of the demised premises as of June 30, 1923. It was contended by the representatives of the Veterans Bureau that the lease in question did not extend beyond June 30, 1923, on the theory that there had been no authority in the Director of the Veterans' Bureau to make a lease for more than one fiscal year. Representatives of

the claimant contended that the lease extended to June 30, 1926, unlss there should be a failure of appropriations, which had not been the case. When June 30, 1923, arrived the officials of the Veterans' Bureau desired to occupy the premises beyond that date, and possession was continued by the United States into the following fiscal year, the officials of the Veterans' Bureau then stating that there was no intention on the part of the United States to pay rent for any longer time than the actual period of occupancy, and the officials of the claimant company stating [fol. 7] that it was their contention that the lease extended to June 30, 1926, and that even if the original lease was not binding beyond June 30, 1923, nevertheless if the United States remained longer than June 30, 1923, it would at least be liable for the stipulated rent for the year ending June 30, 1924, under the laws of the State of Ohio by reason of holding over.

10. Thereafter the United States continued in possession of said demised premises up to December 20, 1923, and vacated said premises on said date, and since that date has not been in possession of the same.

11. The United States has paid rent to the claimant according to the terms of said lease for the entire period up to December 31, 1923. The claimant presented a claim for rent for the balance of the term to June 30, 1926, and for the amortization of certain sums expended by the claimant for alterations under the lease. By decision of the General Accounting Office of May 16, 1925, Claim No. 047108, the claimant was allowed rent for the period to June 30, 1924, in the sum of $22,852.94. On review, however, this decision was reversed and by decision of the Comptroller General of September 5, 1925, A-10726, the claimant was allowed only the sum of $3,679.39, representing the unpaid rent for December, 1923, the last month that the United States occupied the premises, and claim for rent during the period when the United States was not in actual occupancy was totally disallowed. On application for rehearing this decision was affirmed by the Comptroller General September 24, 1925, and the claimant has never received any rent for any part of the period after December 31, 1923.

[fol. 8] 12. The claimant has made vigorous efforts to rent the demised premises to other parties for the period after December 20, 1923, but has only succeeded in finding three tenants, the Style Center Tailoring Company for a portion of the space from October 1, 1924, to January 31, 1925, at a rental of $1,200, the B. F. Goodrich Company for a portion of the space for a term beginning November 15, 1924, and expiring after June 30, 1925, for a rental up to June 30, 1926, in the sum of $8,220.12, and the Milton Ochs Company for a portion of the space for a term beginning February 1, 1925, and expiring after June 30, 1926, for a rental up to June 30, 1926, in the sum of $26,432.47.

13. None of these leases were for any part of the period from December 31, 1923, to June 30, 1924.

14. Said lease to the United States described in paragraph 3 hereof provided for the rendering of certain services by the lessor in and about the building. Owing to the fact that the United States is not occupying the space for the period from December 20, 1923, to June 30, 1926, the claimant will save in building services the sum of $13,902.37. The proportionate part of this saved during the period from December 20, 1923, to June 30, 1924, is $2,902.69.

15. By reason of the United States vacating said demised premises the claimant asserts a claim against the United States as follows:

A. On the theory that the lease was binding to June 30, 1926, claim is made as follows:

[fol. 9] $44,152.58 a year, January 1, 1924, to June 30, 1926, 3,679.38 a month, 30 months		$110,381.40
Less—		
Rental Style Center	$1,200.00	
Rental Goodrich	8,220.12	
Rental Ochs	26,432.47	
Building services not rendered	13,902.37	
	$49,754.96	49,754.96
Net claim		$60,626.44

B. On the theory that the lease only extended to June 30, 1924, or that the United States is bound for the year July 1, 1923, to June 30, 1924, by reason of holding over, claim is made as follows:

Total rent January 1, 1924, to June 30, 1924	$22,076.29
Less building services	2,902.69
Net loss on rental January to June, 1924	$19,173.60

16. The claimant has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to rebellion against said Government. It is the sole and absolute owner of the claim herewith presented. It has made no transfer or assignment of said claim or any part thereof, and it is justly entitled to the amount claimed herein from the United States after allowing all just credits and set-offs.

[fol. 10] Claimant therefore prays judgment in its favor against the United States in the sum of $60,626.44.

The Goodyear Tire & Rubber Company, Inc., by Chas. A. Stillman, Secretary. Covington, Burling & Rublee, Attorneys for Claimant. Spencer Gordon, of Counsel.

Duly sworn to by Charles A. Stillman. Jurat omitted in printing.

[fol. 11] CLAIMANT'S EXHIBIT 1 TO PETITION

Proposal to Lease to the United States

We, the Goodyear Tire & Rubber Company, incorporated under the Laws of the State of Ohio, having our principal office and place of business at Akron, Summitt County, Ohio, propose to lease to the United States for the use of the Bureau of War Risk Insurance, the following described premises:

(a) The entire first, second and third floors, containing approximately 35,171 square feet of floor space, in the building located at 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, State of Ohio. The rent to be

paid shall be at the rate of Thirty-three Thousand Four Hundred and Twelve Dollars Eighty-three Cents ($33,-412.83) per annum, payable in equal monthly istallments in arrears. The term for this shall be beginning September 1, 1921 and ending June 30, 1926.

(b) The entire fourth floor, containing approximately 11,305 square feet of floor space in the building located at 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, State of Ohio. The rent to be paid shall be at the rate of Ten Thousand Seven Hundred Thirty-nine Dollars Seventy-five Cents ($10,739.75) per annum, payable in equal monthly installments in arrears. The term shall begin April 1, 1922 and end June 30, 1926.

The above premises noted at (a) and (b) are a part of the premises leased to us by The Kruse & Bahlman Hardware Company under date of January 30, 1920, all of which premises leased by them to us are described in said lease as follows:

"Situated in the City of Cincinnati, County of Hamilton and State of Ohio, viz: Commencing on the south side of Sixth Street in said City of Cincinnati at a point one hundred (100) feet east of Broadway, which said point is the northwest corner of lot No. Thirty (30) of Piatt and Spencer's Subdivision recorded in Deed Book R. I. page 108 of the records of deeds of Hamilton County, Ohio, and which said point is also the corner of Sixth Street and Scott Alley; thence eastwardly with the south line of Sixth Street two hundred and eight-four (284) feet and nine (9) inches; thence southwardly on a line at right angles to said Sixth Street eighty three (83) feet to the north line of a ten (10) foot Alley known as James Alley; thence westwardly one hundred and forty-one feet and ten (10) inches to the west line of Werner Alley which said point is the southeast [fol. 12] corner of Lot No. 34 of said Piatt and Spencer's Sub-division; thence southwardly on the west line of Werner Alley, it being a line parallel to the east line of Broadway, ninety-three (93) feet to the north line of Pioneer Street; then westwardly along the north line of Pioneer Street one hundred and forty-two (142) feet and eleven (11) inches to the east line of Scott Alley; thence northwardly along the east line of Scott Alley one hundred and

seventy-six (176) feet to the south line of Sixth Street and the place of beginning—which said property comprises lots thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), seventeen feet and six (6) inches off the west part of lot thirty-nine (39); also lots nineteen (19), twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23) of said Piatt and Spencer's subdivision; also James Alley running from the east line of Scott Street to the west line of Werner Alley, and also Werner Alley from the south side of Sixth Street to the North line of James Alley—said two alleys having been vacated by ordinance of the City of Cincinnati and being the same property leased to The Kruse & Bahlman Hardware Company by lease from Eugene H. Hughes, recorded in Lease Book 124, page 378, Records of Leases of Hamilton County, Ohio, together with four (4) story buildings and basements located thereon, consisting of a building extending from the north side of Pioneer Street, to the south side of Sixth Street, being the Northwest and Southwest divisions of premises herein leased and which two divisions shall hereafter be referred to as The Pioneer Street Building; and another building located on the Northeast division of said premises now occupied by The Waterproof Paper Company, which building shall hereafter be known as the Northeast building * * * "

The above proposal is made to the following terms and conditions:

1. It is mutually understood and agreed that in the event an appropriation is not made from which rent hereunder for any succeeding fiscal year may be paid, this agreement shall automatically terminate as of June 30th of the fiscal year for which an appropriation is last available, and in such event both parties hereto shall be relieved from obligation hereunder in like manner as if the term of occupancy had run its full period.

2. That satisfactory light, heat, water, elevator and janitor service shall be furnished by us without additional charge.

3. That we shall repaint the walls, ceiling and woodwork of the demised premises whenever such painting is necessary, without cost to the Lessee.

[fol. 13] 4. That prior to the date of occupancy we shall cause to be made without cost to the Lessee such alterations and improvements within the demised premises, including plumbing, toilet fixtures, light fixtures, elevator alterations, partitions, cutting and providing a satisfactory entrance to Pioneer Street, according to plans and specifications hereto attached and marked "Exhibit A" and initialed for purposes of identification by J. J. B.

5. That we shall, subsequent to the effective date of this lease, cause to be made alterations as may be required from time to time during the life of this agreement or any renewal thereof, to make more efficient the work and operation of the Bureau of War Risk Insurance, and shall perform all such work of alteration in accordance with plans and specifications to be approved by the Director of the Bureau of War Risk Insurance prior to the undertaking of the actual work of alteration. It is hereby agreed that we shall be reimbursed for the actual cost of such work of alteration and material used, and that the actual work of installation of special fixtures and equipment is included in the terms of this condition, such special fixtures and equipment to be furnished at the expense of, and to be and remain the exclusive property of the Lessee, or if the Lessee so elects, such work of installation may be done directly by the Lessee.

6. It is an expressed condition and it is mutually understood and agreed that no changes or alterations or improvements shall be required to be made by us which shall be contrary to or in conflict with the terms and conditions relative thereto incorporated in the lease to us from The Kruse & Bahlman Hardware Company, above referred to, which terms and conditions are hereto attached marked "Exhibit B" and made a part hereof and which for purposes of identification is initialed H. S. K.

[fol. 14] 7. That we will warrant and defend to the Lessee, its officers and agents, the quiet and peaceful possession and occupancy of the aforesaid demised premises, and in

case of any disturbance by suit or otherwise, will defend the same free of charge to the Lessee before the proper State or United States Courts.

8. That for and in consideration of the faithful performance of the conditions and stipulations of this agreement, the Lessee shall pay to us the sum or sums specified in Condition — hereof, and such other sums for which the Lessee may become liable under the provisions of Conditions and payment to be made at the end of each calendar month, or as soon as practicable thereafter. Should the premises be relinquished before the close of any monthly period, the rental for the last period shall be only the pro rata part of the monthly rental.

9. We covenant and agree to pay all taxes and assessment of every nature that may be levied or assessed upon said demised premises during the term of this lease or renewals thereof, if any.

10. That we, at our own expense, shall make all repairs necessary to said demised premises during the term of this lease and of the renewals thereof, if any, and that no structural changes shall be made by us without first obtaining the written consent of the Lessee thereto.

11. All improvements fixed to, or erected, or placed in or upon said demised premises by the Lessee shall be and remain the exclusive property of the Lessee; provided, however, that the same unless sold or otherwise disposed of, shall be removed by the Lessee within fifteen (15) days after vacating said demised premises.

[fol. 15] 12. At the expiration of this lease, or renewals thereof, if any, the said Lessee agrees to return all the demised premises in like good order as when received, depreciation, use, ordinary wear and tear, fires and other unavoidable casualty excepted.

13. That in the event the building on said demised premises, or any part thereof, shall be destroyed by fire or other casualty or shall without fault on the part of the Lessee become untenantable or unfit for occupancy in the opinion of the Director of the Bureau of War Risk Insurance, rent of such building or part of building as shall be so rendered

untenantable or unfit for occupancy, or a proportionate part of such rent, shall cease and remain suspended and abated for the whole period during which occupancy thereof shall be prevented by such casualty or cause; and in such event this lease may be cancelled by said Lessee at its option, provided, however, that nothing herein shall bind us or obligate us in any way which shall be contrary to or in conflict with the provisions with reference to the destruction or partial destruction by fire contained in the lease to us from The Kruse & Bahlman Hardware Company above referred to, said provisions being attached hereto marked "Exhibit C" and hereby made a part hereof and which for purposes of identification is initialed H. S. K.

14. That no third person has been employed to solicit or obtain this agreement, or to cause or procure the same to be obtained upon compensation in any way contingent in whole or in part upon such procurement; that there has not been paid, or promised, or agreed to be paid to any third person in consideration of services in connection therewith, any brokerage, commission or percentage upon the amount [fols. 16-18] receivable hereunder; that in estimating the rental charge no sum has been included therein by reason of any such brokerage, commission or percentage; that all moneys receivable hereunder are free from obligation to any other person for services rendered or supposed to have been rendered in the procurement of this agreement; that any breach of this condition shall constitute adequate cause for the an-ulment of this agreement by the United States; and that the United States may retain to its own use from any sum due or to become due hereunder, an amount equal to any brokerage, commission or percentage so paid, or promised, or agreed to be paid; provided, however, that this condition does not apply to procurement through a bona fide real estate agency, or through a bona fide commercial representative employed by us in the regular course of business in dealing with Lessees other than the Government.

15. That no Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any part or share in this agreement, or to any benefit to arise therefrom.

Respectfully, The Goodyear Tire & Rubber Company.
(Signed) Edw. G. Wilmer, President.

Attest: (Signed) W. D. Shilts, Ass't Secretary.
Akron, Ohio, July 27, 1921.

[fol. 19] CLAIMANT'S EXHIBIT 2 TO PETITION

Treasury Repartment, Bureau of War Risk Insurance, Washington

August 23, 1921.

In reply refer to L. & C. Room 1025.
The Goodyear Tire & Rubber Co., Inc., East Market Street, Akron, Ohio.

GENTLEMEN: Pursuant to authority vested in the Director of the Veterans' Bureau, by Act of Congress (H. R. 361—67th Congress) your proposal of July 27, 1921, to lease to the United States for the use of the Veterans Bureau, approximately 46,476 square feet of floor space in the building located at No. 415 East Sixth Street Cincinnati, Ohio, for office purposes, is hereby accepted subject to the following conditions:

That the Veterans' Bureau for and in behalf of the United States of America (hereinafter designated as lessee) of the first part, and the Goodyear Tire and Rubber Co., Inc. (hereinafter designated as lessor) of the second part, do hereby covenant and agree with each other as follows:

1. That the said lessor shall, and by these presents does hereby lease, demise, and let to the lessor the following described premises, to have and to hold the same with their appurtenances unto the lessee under the conditions named below, viz:

(a) The entire first (1st), second (2nd) and third (3rd) floors, containing approximately 35,171 square feet of floor space in the building located at No. 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, State of Ohio. The rent to be paid for the term beginning with

date of occupancy and ending June 30, 1926, shall be at the rate of Thirty-three thousand four hundred and twelve Dollars, and eighty-three cents ($33,412.83) per annum, [fol. 20] payable in equal monthly installments in arrears.

(b) The entire fourth (4th) floor, containing approximately 11,305 square feet of floor space in the building located at No. 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, State of Ohio. The rent to be paid for the term beginning April 1, 1922, and ending June 30, 1926, shall be at the rate of Ten Thousand seven hundred and thirty-nine Dollars and seventy-five cents ($10,739.75) per annum, payable in equal monthly installments in arrears.

(c) That it is mutually understood and agreed that in the event an appropriation is not made from which rent hereunder for any succeeding fiscal year may be paid, this agreement shall automatically terminate as of June 30th of the fiscal year for which an appropriation is last available, and in such event both parties hereto shall be relieved from obligation hereunder in like manner as if the term of occupancy had run its full period.

(d) That satisfactory light, heat, water, elevator and janitor service shall be furnished by the lessor without additional charge.

(e) That the lessor shall repaint the walls, ceilings and woodwork of the demised premises whenever such painting is necessary without cost to the lessee.

(f) That prior to the date of the occupancy the lessor shall without cost to the lessee cause to be made within the demised premises described as the first (1st), second (2nd) and third (3rd) floors in Condition 1—(a) hereof, alterations and improvements including plumbing, toilet fixtures, light fixtures, elevator alterations, partitions, cutting and providing a satisfactory entrance to Pioneer Street in accordance with the plans and specifications hereto attached and marked "Exhibit A" and initialed for purpose of identification "J. J. B." and the lessor herein agrees to make without cost to the lessee additional alterations, as may be considered necessary by the Director of the Veterans' Bu-

reau to better fit the premises for the use and occupancy [fol. 21] of the lessee, such alterations and improvements to cost not exceeding one thousand ($1,000) Dollars.

That prior to the date of occupancy the lessor shall cause to be made without cost to the lessee herein, changes, alterations and improvements within the demised premises described as the fourth (4th) floor containing approximately eleven thousand three hundred and five (11,305) square feet of floor space in Condition 1—(b) hereof as may be considered necessary by the Director of the Veterans' Bureau, such alterations and improvements to be made in accordance with plans and specifications to be approved by the lessee and the actual cost thereof to be paid by the lessor to not exceed the sum of five thousand ($5,000) dollars.

2. That the lessor shall, subsequent to the effective date of this lease, cause to be made alterations as may be required from time to time during the life of this agreement or any renewal thereof, to make more efficient the work and operation of the Veterans' Bureau and shall perform all such work of alteration in accordance with plans and specifications to be approved by the Director of the Venterans' Bureau prior to the undertaking of the actual work of alteration. It is hereby agreed that the lessor shall be reimbursed for the actual cost of such work of alteration and that the actual work of installation of special fixtures and equipment is included in the terms of this condition, such special fixtures and equipment to be furnished at the expense of, and to be and remain the exclusive property of the lessee, or if the lessee so elects, such work of installation my be done directly by the lessee.

3. That the parties hereto agree and it is mutually understood that no changes or alterations or improvements will be required or made within the demised premises which shall be contrary to or in conflict with the terms and conditions relative thereto incorporated in the lease existing between the lessor herein and the Kruse and Bahlman Hard- [fol. 22] ware Company, the said the terms and conditions of said lease are hereto attached, marked "Exhibit B"

and made a part hereof and for purpose of identification is initialed "H. S. K."

4. That the said lessor will warrant and defend to the lessee, its officers and agents, the quiet and peaceful possession and occupancy of the aforesaid demised premises, and in case of any disturbance by suit or otherwise, will defend the same free of charge to the lessee before the proper State or United States Courts.

5. That for and in consideration of the faithful performance of the conditions and stipulations of this agreement, the lessee shall pay to the lessor the sum or sums specified in Condition "1" (a) and (b) hereof, and such other sums for which the lessee may become liable under the provisions of Conditions "2" and "9;" payment to be made at the end of each calendar month, or as soon as practicable thereafter. Should the premises be relinquished before the close of any monthly period, the rental for the last period shall be only the pro-rata part of the monthly rental.

6. The lessor covenants and agrees to pay all taxes and assessments of every nature that may be levied or assessed upon said demised premises during the term of this lease or renewals thereof, if any.

7. That the lessor at its own expense shall make all repairs necessary to said demised premises during the term of this lease and of the renewals thereof, if any, and that no structural changes shall be made by the lessor without first obtaining the written consent of the lessee thereto.

8. All improvements fixed to, or erected, or placed in or upon said demised premises by the lessee shall be and remain the exclusive property of the lessee; provided, however, that the same unless sold or otherwise disposed of, shall be removed by the lessee within fifteen (15) days after vacating said demised premises.

9. At the expiration of this lease, or renewals thereof, if any, the said lessee agrees to return the demised premises in like good order and condition as when received depreciа-

tion, use, ordinary wear and ear, fires and other unavoidable casualty excepted.

[fol. 23] 10. That in the event the building on said demised premises or any part thereof, shall be destroyed by fire or other casualty, or shall without fault on the part of the lessee become untenantable or unfit for occupancy in the opinion of the Director of the Veterans' Bureau, rent of such building or part of building as shall be so rendered untenantable or unfit for occupancy, or a proportionate part of such rent shall cease and remain suspended and abated for the whole period during which occupancy thereof shall be prevented by such casualty or cause; and in such event this lease may be cancelled by said lessee at its option provided, however, that nothing herein shall bind or obligate the lessor in any way which shall be contrary to or in conflict with the provisions with reference to the destruction or partial destruction of the premises by fire contained in the existing lease between the lessor herein and The Kruse and Bahlman Hardware Company, said provisions being attached hereto, marked "Exhibit C" and hereby made a part hereof and for purpose of identification is initialed "H.S.K."

11. That no third person has been employed to solicit or obtain this agreement, or to cause or procure the the same to be obtained upon compensation in any way contingent in whole or in part upon such procurement; that there has not been paid, or promised, or agreed to be paid to any third person in consideration of services in connection therewith, any brokerage, commission or percentage upon the amount receivable hereunder; that in estimating the rental charge no sum has been included therein by reason of any such brokerage, commission or percentage; that all moneys receivable hereunder are free from obligation to any other person for services rendered or supposed to have been rendered in the procurement of this agreement; that any breach of this condition shall constitute adequate cause for the annulment of this agreement by the United States; and that the United States may retain to its own use from any sum due or to become due hereunder, an amount equal to any brokerage, commission

or percentage so paid, or promised, or agreed to be paid; [fols. 24-49] provided, however, that this condition does not apply to procurement through a bona fide real estate agency, or through a bona fide commercial representative employed by the lessor in the regular course of business in dealing with lessee other than the Government.

12. That no Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any part or share in this agreement, or to any benefit to arise therefrom.

You are requested to retained the original of this communication and write upon the accompanying copies thereof, date and sign, your unqualified assent to the foregoing covenants and conditions, and return the copies promptly to this Bureau together with authenticated evidence of authority of the person signing on behalf of the Corporation. It is requested that the corporate seal be affixed to each assent copy.

Respectfully, (Signed C. T. Forbes, Director Veterans' Bureau.

We hereby assent fully to all the foregoing terms and conditions October 13, 1921.

The Goodyear Tire & Rubber Co., by G. M. Stadelman, Vice-President.

Attest: Chas. A. Stillman, Secretary. (Seal.)

[fol. 50] CLAIMANT'S EXHIBIT 3 TO PETITION

Assignment of Lease

The Goodyear Tire & Rubber Company, a corporation duly organized and existing under the laws of the State of Ohio, for and in consideration of the sum of One Dollar ($1.00), receipt of which is hereby acknowledged, and of the covenants hereinafter contained, does hereby assign, transfer and set over unto The Goodyear Tire & Rubber Company, Inc., a corporation duly organized and existing under the laws of the State of Delaware, a certain lease

between The Goodyear Tire & Rubber Company as Lessor, and the U. S. Veterans' Bureau entered into under date of October 13, 1921, leasing certain premises, to wit:

(a) The entire first, second and third floors containing approximately 35,171 square feet of floor space in the building located at 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, and State of Ohio.

(b) The entire fourth floor containing approximately 11,305 square feet of floor space in the building located at 415 East Sixth Street, in the City of Cincinnati, County of Hamilton, and State of Ohio.

The said The Goodyear Tire & Rubber Company, Inc., a Delaware corporation, in consideration of the foregoing assignment, does hereby agree and covenant that it will duly and punctually observe and perform all of the terms, conditions and covenants in said lease contained which are to be performed and observed by the said Lessor.

[fol. 51] In witness whereof, the said The Goodyear Tire & Rubber Company, an Ohio Corporation, and the said The Goodyear Tire & Rubber Company, Inc., a Delaware Corporation, have caused this instrument to be executed by their duly authorized officers as of the 9th day of January, 1922.

The Goodyear Tire & Rubber Company, by G. A. Stadelman. Attest: Chas. A. Stillman. (Seal.)
The Goodyear Tire & Rubber Company, Inc., by Frank K. Espenhain, Vice-President. Attest: W. D. Shilts. (Seal.)

Legal features approved. R. W. B. 12/10/24.

[fol. 52] II. Defendant's Demurrer—Filed April 16, 1926

Defendant demurs to the petition in the above-entitled case for the reason that it fails to state a cause of action against the United States.

Herman J. Galloway, Assistant Attorney General.
John E. Hoover, Attorney.

III. Argument and Submission of Demurrer

On May 17, 1926, the demurrer in this case was argued and submitted by Mr. John E. Hoover, for the defendant, and by Mr. Spencer Gordon, for the plaintiff.

[fol. 53] IV. Opinion of the Court by Graham, J., on Demurrer to Petition—Filed June 14, 1926

On Demurrer to the Petition

Graham, Judge, delivered the opinion of the court.

The plaintiff sues for recovery of unpaid rent under a lease entered into on behalf of the United States by C. R. Fobes, Director of the Veterans' Bureau. The lease was for the first, second, third, and fourth floors of a building located in Cincinnati, Ohio, and was entered into August 23, 1921. It was to continue until June 30, 1926. Prior to June 30, 1923, a representative of the Veterans' Bureau notified plaintiff that the United States would give up occupancy of the premises as of June 30, 1923. What followed is stated thus in plaintiff's petition:

"When June 30, 1923, arrived the officials of the Veterans' Bureau desired to occupy the premises beyond that date, and possession was continued by the United States into the following fiscal year, the officials of the Veterans' Bureau then stating that there was no intention on the part of the United States to pay rent for any longer time than the actual period of occupancy, and the officials of the claimant company stating that it was their contention that the lease extended to June 30, 1926, and that even if the original lease was not binding beyond June 30, 1923, nevertheless if the United States remained longer than June 30, 1923, it would at least be liable for the stipulated rent for the year ending June 30, 1924, under the laws of the State of Ohio by reason of holding over."

Plaintiff originally asked for the recovery of the rent to June 30, 1926. However, it has abandoned this claim and is only claiming rent for the period from December 31,

1923, to June 30, 1924. Alluding to the validity of the lease to June 30, 1926, plaintiff in its brief says:

"Claimant's counsel have made a reexamination of the authorities on this question and have decided to abandon this point."

So that the case narrows down to the question whether the United States "was bound for the entire year ending June 30, 1924, by reason of holding over after June 30, 1923."

As stated, the Government held over and occupied the premises after June 30, 1923, to December 20, 1923, and paid rent to December 31, 1923. After the Government [fol. 54] gave notice of its intention to vacate and surrender the premises as of June 30, 1923, it found it desirable to hold over for awhile and notified plaintiff to that effect, stating that it had no intention to pay rent for a longer time than the actual period of occupancy. Thereupon it was contended by plaintiff that if the Government held over it would be bound for the whole year, under the laws of the State of Ohio.

It does not appear that plaintiff took any steps to recover possession of the premises. There was no express contract or coming together of the minds of the parties on the subject. The Government said that it would hold over and would pay only for the time it occupied the premises. The plaintiff did nothing more than make a "contention" that the United States would be bound for the rent to June 30, 1926, or at least for the remainder of the year ending June 30, 1924, under the laws of the State of Ohio.

In the brief of plaintiff's attorneys it is stated that "there was no agreement whatsoever between the claimant and the United States as to the type of tenancy under which the United States was to occupy the premises after June 30, 1923." It is therefore admitted, and could not be denied, that there was no express agreement as to the tenancy, and consequently no express contract has been shown.

Under these circumstances the best that can be said for plaintiff is that the United States by holding over would have been liable for the rental value of the premises for the period for which they were used. It seems to be conceded that the rental fixed by the lease was the rental value.

The United States occupied the premises for six months and paid the rental fixed by the lease for that period. It could not under the circumstances be held for anything more.

The demurrer should be sustained and the petition dismissed, and it is so ordered.

Hay, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

[fol. 55] V. Judgment—June 14, 1926

At a Court of Claims held in the City of Washington on the 14th day of June, A. D., 1926, judgment was ordered to be entered as follows:

This case was submitted upon the defendant's demurrer to the plaintiff's petition, on consideration whereof the court is of opinion that the demurrer is well taken.

It is therefore ordered and adjudged that the defendant's said demurrer be sustained and that the petition be and the same hereby is dismissed.

VI. Proceedings After Entry of Judgment

On July 16, 1926, the plaintiff filed a motion for a new trial.

On October 25, 1926, the court entered the following order on said motion:

Order

It is ordered by the Court this 25th day of October, 1926, that the plaintiff's motion for new trial be and the same is overruled.

[fol. 56] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 57 & 58] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

STIPULATION AS TO PRINTING OF THE RECORD—Filed January 6, 1927

It is stipulated and agreed that the Clerk of the Supreme Court of the United States in printing the record in the case of the Goodyear Tire & Rubber Company, Inc. v. The United States, No. F 70 in the Court of Claims of the United States, in connection with the petition for certiorari to be filed on behalf of the Goodyear Tire & Rubber Company, Inc., may omit from such printing certain parts of the exhibits to the petition in the court below the printing of which was waived by that court, to wit:

Exhibit B, Record page 17.
Exhibit C, Record page 18.
Exhibit C, Record page 25.
Exhibit B, Record page 26.
Specifications of Labor and Materials, Record pages 27 to 29, inclusive.
Specifications for Alterations, Record pages 30 to 48, inclusive.
Certified Copy of Minutes, Record page 49.

William D. Mitchell, Solicitor General. Covington, Burling & Rublee, Attorneys for Petitioner.

O. K. H. J. Galloway, J. E. H.

[fol. 59] [File endorsement omitted.]

Endorsed on cover: File No. 32,383. Court of Claims. Term No. 816. The Goodyear Tire & Rubber Company, Inc., petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed January 6, 1927. File No. 32,383.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 11, 1927

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6632)